

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 781

An Act to amend and reenact §§ 6.1-32.3, 6.1-32.11, 6.1-32.19, and 6.1-32.20 of the Code of Virginia, relating to subsidiary trust companies and trust company holding companies.

[S 542]

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-32.3, 6.1-32.11, 6.1-32.19, and 6.1-32.20 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-32.3. Organization of subsidiary trust companies.

A subsidiary trust company may be incorporated and organized under Article 3 (§ 13.1-618 et seq.) of Chapter 9 of Title 13.1 or under federal laws relating to national banking associations for the purpose of conducting a trust business and business incidental thereto, as defined in § 6.1-32.5. All the outstanding *voting* shares of such subsidiary trust company (other than directors' qualifying shares) shall be owned directly or indirectly through a subsidiary by ~~a one or more~~ Virginia bank holding company ~~or companies~~, by one or more banks authorized to have a main or parent office in Virginia, ~~or both~~. Such trust subsidiary shall be subject to regular examination and supervision by the State Corporation Commission or by the Comptroller of the Currency of the United States. If incorporated under Title 13.1, the trust subsidiary shall pay such examination fees as may be from time to time imposed upon trust departments of banks subject to examination by the State Corporation Commission.

§ 6.1-32.11. Definitions.

As used in this article:

"Affiliated trust company" means a trust company that is controlled by a trust company holding company. ~~For purposes of this article, a trust company holding company or other person has control of a trust company or other legal entity if the person owns twenty-five percent or more of the voting stock of the trust company or entity; if, pursuant to the definition of control in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), the person would be presumed to control the trust company or entity; or if the Commission determines that the person exercises a controlling influence over the management and policies of the trust company or entity.~~

"Agent" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act (§ 13.1-501 et seq.).

"Broker-dealer" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Commission" means the State Corporation Commission of the Commonwealth of Virginia.

"Control" means ownership by a person of 25 percent or more of the voting stock of a trust company or entity; control as defined in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.); or, as determined by the Commission, the exercise of a controlling influence over the management and policies of a trust company or entity.

"Fiduciary" means executor, administrator, conservator, guardian of a minor, committee, or trustee.

"Investment advisor" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Investment advisor representative" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Investment company" shall have the same meaning assigned to that term in the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.).

"Operating plan" means a plan submitted by an applicant for a certificate of authority, which plan establishes the policies and procedures a trust company will have in effect when the institution opens for business and thereafter (i) to avoid or resolve conflicts of interests, (ii) to prevent improper influences from affecting the actions of the trustee, (iii) to ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct, and (iv) to assure compliance with applicable laws and regulations.

"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals, however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) ~~ten~~ 10 percent or more of the outstanding stock of a stock corporation or (ii) a ~~ten~~ 10 percent or greater interest in a nonstock corporation or a limited liability company.

"Trust business" means the holding out by a person or legal entity to the public at large by advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary in the Commonwealth of Virginia or is accepting and undertaking to perform the duties of a fiduciary in

the regular course of its business.

"Trust company" means a corporation, including an affiliated trust company, authorized to engage in the trust business under this article with powers expressly restricted to the conduct of general trust business.

"Trust company holding company" means a corporation ~~which owns, directly or indirectly, five percent or more of any class of capital stock of a broker-dealer, investment advisor or investment company and which also that~~ controls a trust company. A trust company holding company shall not be deemed a financial institution holding company for any purpose under this title unless it controls a financial institution other than an affiliated trust company or another financial institution holding company.

§ 6.1-32.19. Acquisition of stock; application.

A. Except as provided in this section, no person shall acquire directly or indirectly ~~ten~~ 10 percent or more of the voting shares of a trust company unless such person first:

1. Files an application with the Commission in such form as the Commission may prescribe ~~from time to time~~;

2. Delivers such other information to the Commission as the Commission may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers and principals and of any proposed new directors, senior officers and principals of the trust company; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the acquisition, subject to § 6.1-32.20, if it finds that the applicant and its members if applicable, its directors, senior officers and principals and any proposed new directors, senior officers and principals have the financial responsibility, character, reputation, experience and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within ~~sixty~~ 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commission reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The foregoing provisions of this section shall not apply to a person owning ~~fifty-one~~ 51 percent or more of the capital stock of the trust company at the time of the proposed acquisition; however, such person shall give the Commission ~~thirty~~ 30 days advance written notice of the proposed acquisition and provide such additional information as the Commission may require.

§ 6.1-32.20. Restrictions on control, officers and directors.

A. None of the following individuals or entities shall ~~be or become a control person~~ acquire control of any trust company *under § 6.1-32.19*:

1. An agent;
2. A broker-dealer;
3. An investment advisor;
4. An investment advisor representative;
5. An investment company; or

6. Any corporation, limited liability company, partnership, business trust, association, or similar organization.

~~B. For the purposes of this provision, a "control person" means any individual or entity owning, directly or indirectly, five percent or more of any class of voting capital stock of a trust company.~~

C B. Nothing in this section shall prohibit (i) the formation of a trust company holding company from owning, directly or indirectly, twenty-five percent or more of any class of capital stock of by a trust company or, (ii) any officer, director or employee of a trust company holding company or a subsidiary of a trust company holding company from owning, indirectly, five percent or more of any class of capital stock of an affiliated trust company, or (iii) the acquisition of a trust company pursuant to § 6.1-32.19 by a bank holding company as defined in 12 U.S.C. § 1841, or by a corporation that controls a subsidiary authorized to engage in the trust business under federal law or the laws of any state.